

108TH CONGRESS
1ST SESSION

S. 183

To address Securities and Exchange Commission authority to impose civil money penalties in administrative proceedings for violations of securities laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 16, 2003

Mr. LEVIN (for himself, Mr. NELSON of Florida, Mr. CORZINE, and Mr. BIDEN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To address Securities and Exchange Commission authority to impose civil money penalties in administrative proceedings for violations of securities laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “SEC Civil Enforcement
5 Act”.

6 **SEC. 2. SECURITIES CIVIL ENFORCEMENT PROVISIONS.**

7 (a) **AUTHORITY TO ASSESS CIVIL MONEY PEN-**
8 **ALTIES.—**

1 (1) SECURITIES ACT OF 1933.—Section 8A of
 2 the Securities Act of 1933 (15 U.S.C. 77h–1) is
 3 amended by adding at the end the following new
 4 subsection:

5 “(g) AUTHORITY OF THE COMMISSION TO ASSESS
 6 MONEY PENALTY.—

7 “(1) IN GENERAL.—In any cease-and-desist
 8 proceeding under subsection (a), the Commission
 9 may impose a civil monetary penalty if it finds, on
 10 the record after notice and opportunity for hearing,
 11 that a person is violating, has violated, or is or was
 12 a cause of the violation of, any provision of this title
 13 or any rule or regulation thereunder, and that such
 14 penalty is in the public interest.

15 “(2) MAXIMUM AMOUNT OF PENALTY.—

16 “(A) FIRST TIER.—The maximum amount
 17 of penalty for each act or omission described in
 18 paragraph (1) shall be \$100,000 for a natural
 19 person or \$250,000 for any other person.

20 “(B) SECOND TIER.—Notwithstanding
 21 subparagraph (A), the maximum amount of
 22 penalty for such act or omission described in
 23 paragraph (1) shall be \$500,000 for a natural
 24 person or \$1,000,000 for any other person, if
 25 the act or omission involved fraud, deceit, ma-

1 manipulation, or deliberate or reckless disregard of
2 a statutory or regulatory requirement.

3 “(C) THIRD TIER.—Notwithstanding sub-
4 paragraphs (A) and (B), the maximum amount
5 of penalty for each act or omission described in
6 paragraph (1) shall be \$1,000,000 for a natural
7 person or \$2,000,000 for any other person, if—

8 “(i) the act or omission involved
9 fraud, deceit, manipulation, or deliberate
10 or reckless disregard of a statutory or reg-
11 ulatory requirement; and

12 “(ii) such act or omission directly or
13 indirectly resulted in substantial losses or
14 created a significant risk of substantial
15 losses to other persons or resulted in sub-
16 stantial pecuniary gain to the person who
17 committed the act or omission.

18 “(3) EVIDENCE CONCERNING ABILITY TO
19 PAY.—In any proceeding in which the Commission
20 or the appropriate regulatory agency may impose a
21 penalty under this section, a respondent may present
22 evidence of the ability of the respondent to pay such
23 penalty. The Commission or the appropriate regu-
24 latory agency may, in its discretion, consider such
25 evidence in determining whether the penalty is in the

1 public interest. Such evidence may relate to the ex-
 2 tent of the person’s ability to continue in business
 3 and the collectability of a penalty, taking into ac-
 4 count any other claims of the United States or third
 5 parties upon the assets of that person and the
 6 amount of the assets of that person.”.

7 (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-
 8 tion 21B(a) of the Securities Exchange Act of 1934
 9 (15 U.S.C. 78u–2(a)) is amended—

10 (A) in paragraph (4), by striking “super-
 11 vision;” and all that follows through the end of
 12 the subsection and inserting “supervision.”;

13 (B) by redesignating paragraphs (1)
 14 through (4) as subparagraphs (A) through (D),
 15 respectively, and moving the margins 2 ems to
 16 the right;

17 (C) by inserting “that such penalty is in
 18 the public interest and” after “hearing,”;

19 (D) by striking “In any proceeding” and
 20 inserting the following:

21 “(1) IN GENERAL.—In any proceeding”; and

22 (E) by adding at the end the following:

23 “(2) OTHER MONEY PENALTIES.—In any pro-
 24 ceeding under section 21C against any person, the
 25 Commission may impose a civil monetary penalty if

1 it finds, on the record after notice and opportunity
 2 for hearing, that such person is violating, has vio-
 3 lated, or is or was a cause of the violation of, any
 4 provision of this title or any rule or regulation there-
 5 under, and that such penalty is in the public inter-
 6 est.”.

7 (3) INVESTMENT COMPANY ACT OF 1940.—Sec-
 8 tion 9(d)(1) of the Investment Company Act of 1940
 9 (15 U.S.C. 80a–9(d)(1)) is amended—

10 (A) in subparagraph (C), by striking
 11 “therein;” and all that follows through the end
 12 of the paragraph and inserting “supervision.”;

13 (B) by redesignating subparagraphs (A)
 14 through (C) as clauses (i) through (iii), respec-
 15 tively, and moving the margins 2 ems to the
 16 right;

17 (C) by inserting “that such penalty is in
 18 the public interest and” after “hearing,”;

19 (D) by striking “In any proceeding” and
 20 inserting the following:

21 “(A) IN GENERAL.—In any proceeding”; and

22 (E) by adding at the end the following:

23 “(B) OTHER MONEY PENALTIES.—In any
 24 proceeding under subsection (f) against any
 25 person, the Commission may impose a civil

monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, or is or was a cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.”.

(4) INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

(A) in subparagraph (D), by striking “supervision;” and all that follows through the end of the paragraph and inserting “supervision.”;

(B) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and moving the margins 2 ems to the right;

(C) by inserting “that such penalty is in the public interest and” after “hearing,”;

(D) by striking “In any proceeding” and inserting the following:

“(A) IN GENERAL.—In any proceeding”; and

(E) by adding at the end the following:

“(B) OTHER MONEY PENALTIES.—In any proceeding under subsection (k) against any person, the Commission may impose a civil

monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, or is or was a cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.”.

(b) INCREASED MAXIMUM CIVIL MONEY PENALTIES.—

(1) SECURITIES ACT OF 1933.—Section 20(d)(2) of the Securities Act of 1933 (15 U.S.C. 77t(d)(2)) is amended—

(A) in subparagraph (A)(i)—

(i) by striking “\$5,000” and inserting “\$100,000”; and

(ii) by striking “\$50,000” and inserting “\$250,000”;

(B) in subparagraph (B)(i)—

(i) by striking “\$50,000” and inserting “\$500,000”; and

(ii) by striking “\$250,000” and inserting “\$1,000,000”; and

(C) in subparagraph (C)(i)—

(i) by striking “\$100,000” and inserting “\$1,000,000”; and

1 (ii) by striking “\$500,000” and in-
 2 serting “\$2,000,000”.

3 (2) SECURITIES EXCHANGE ACT OF 1934.—

4 (A) PENALTIES.—Section 32 of the Securi-
 5 ties Exchange Act of 1934 (15 U.S.C. 78ff) is
 6 amended—

7 (i) in subsection (b), by striking
 8 “\$100” and inserting “\$10,000”; and

9 (ii) in subsection (c)—

10 (I) in paragraph (1)(B), by strik-
 11 ing “\$10,000” and inserting
 12 “\$500,000”; and

13 (II) in paragraph (2)(B), by
 14 striking “\$10,000” and inserting
 15 “\$500,000”.

16 (B) INSIDER TRADING.—Section 21A(a)(3)
 17 of the Securities Exchange Act of 1934 (15
 18 U.S.C. 78u–1(a)(3)) is amended by striking
 19 “\$1,000,000” and inserting “\$2,000,000”.

20 (C) ADMINISTRATIVE PROCEEDINGS.—Sec-
 21 tion 21B(b) of the Securities Exchange Act of
 22 1934 (15 U.S.C. 78u–2(b)) is amended—

23 (i) in paragraph (1)—

24 (I) by striking “\$5,000” and in-
 25 serting “\$100,000”; and

1 (II) by striking “\$50,000” and
 2 inserting “\$250,000”;

3 (ii) in paragraph (2)—

4 (I) by striking “\$50,000” and in-
 5 serting “\$500,000”; and

6 (II) by striking “\$250,000” and
 7 inserting “\$1,000,000”; and

8 (iii) in paragraph (3)—

9 (I) by striking “\$100,000” and
 10 inserting “\$1,000,000”; and

11 (II) by striking “\$500,000” and
 12 inserting “\$2,000,000”.

13 (D) CIVIL ACTIONS.—Section 21(d)(3)(B)
 14 of the Securities Exchange Act of 1934 (15
 15 U.S.C. 78u(d)(3)(B)) is amended—

16 (i) in clause (i)—

17 (I) by striking “\$5,000” and in-
 18 serting “\$100,000”; and

19 (II) by striking “\$50,000” and
 20 inserting “\$250,000”;

21 (ii) in clause (ii)—

22 (I) by striking “\$50,000” and in-
 23 serting “\$500,000”; and

24 (II) by striking “\$250,000” and
 25 inserting “\$1,000,000”; and

1 (iii) in clause (iii)—

2 (I) by striking “\$100,000” and
3 inserting “\$1,000,000”; and

4 (II) by striking “\$500,000” and
5 inserting “\$2,000,000”.

6 (3) INVESTMENT COMPANY ACT OF 1940.—

7 (A) INELIGIBILITY.—Section 9(d)(2) of the
8 Investment Company Act of 1940 (15 U.S.C.
9 80a–9(d)(2)) is amended—

10 (i) in subparagraph (A)—

11 (I) by striking “\$5,000” and in-
12 serting “\$100,000”; and

13 (II) by striking “\$50,000” and
14 inserting “\$250,000”;

15 (ii) in subparagraph (B)—

16 (I) by striking “\$50,000” and in-
17 serting “\$500,000”; and

18 (II) by striking “\$250,000” and
19 inserting “\$1,000,000”; and

20 (iii) in subparagraph (C)—

21 (I) by striking “\$100,000” and
22 inserting “\$1,000,000”; and

23 (II) by striking “\$500,000” and
24 inserting “\$2,000,000”.

(B) ENFORCEMENT OF INVESTMENT COMPANY ACT.—Section 42(e)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(2)) is amended—

(i) in subparagraph (A)—

(I) by striking “\$5,000” and inserting “\$100,000”; and

(II) by striking “\$50,000” and inserting “\$250,000”;

(ii) in subparagraph (B)—

(I) by striking “\$50,000” and inserting “\$500,000”; and

(II) by striking “\$250,000” and inserting “\$1,000,000”; and

(iii) in subparagraph (C)—

(I) by striking “\$100,000” and inserting “\$1,000,000”; and

(II) by striking “\$500,000” and inserting “\$2,000,000”.

(4) INVESTMENT ADVISERS ACT OF 1940.—

(A) REGISTRATION.—Section 203(i)(2) of the Investment advisers Act of 1940 (15 U.S.C. 80b–3(i)(2)) is amended—

(i) in subparagraph (A)—

1 (I) by striking “\$5,000” and in-
 2 serting “\$100,000”; and

3 (II) by striking “\$50,000” and
 4 inserting “\$250,000”;

5 (ii) in subparagraph (B)—

6 (I) by striking “\$50,000” and in-
 7 serting “\$500,000”; and

8 (II) by striking “\$250,000” and
 9 inserting “\$1,000,000”; and

10 (iii) in subparagraph (C)—

11 (I) by striking “\$100,000” and
 12 inserting “\$1,000,000”; and

13 (II) by striking “\$500,000” and
 14 inserting “\$2,000,000”.

15 (B) ENFORCEMENT OF INVESTMENT AD-
 16 VISERS ACT.—Section 209(e)(2) of the Invest-
 17 ment advisers Act of 1940 (15 U.S.C. 80b-
 18 9(e)(2)) is amended—

19 (i) in subparagraph (A)—

20 (I) by striking “\$5,000” and in-
 21 serting “\$100,000”; and

22 (II) by striking “\$50,000” and
 23 inserting “\$250,000”;

24 (ii) in subparagraph (B)—

1 (I) by striking “\$50,000” and in-
 2 serting “\$500,000”; and

3 (II) by striking “\$250,000” and
 4 inserting “\$1,000,000”; and

5 (iii) in subparagraph (C)—

6 (I) by striking “\$100,000” and
 7 inserting “\$1,000,000”; and

8 (II) by striking “\$500,000” and
 9 inserting “\$2,000,000”.

10 (c) AUTHORITY TO OBTAIN FINANCIAL RECORDS.—

11 Section 21(h) of the Securities Exchange Act of 1934 (15
 12 U.S.C. 78u(h)) is amended—

13 (1) by striking paragraphs (2) through (8);

14 (2) in paragraph (9), by striking “(9)(A)” and
 15 all that follows through “(B) The” and inserting
 16 “(3) The”;

17 (3) by inserting after paragraph (1), the fol-
 18 lowing:

19 “(2) ACCESS TO FINANCIAL RECORDS.—

20 “(A) IN GENERAL.—Notwithstanding sec-
 21 tion 1105 or 1107 of the Right to Financial
 22 Privacy Act of 1978, the Commission may ob-
 23 tain access to and copies of, or the information
 24 contained in, financial records of any person
 25 held by a financial institution, including the fi-

1 nancial records of a customer, without notice to
2 that person, when it acts pursuant to a sub-
3 poena authorized by a formal order of investiga-
4 tion of the Commission and issued under the
5 securities laws or pursuant to an administrative
6 or judicial subpoena issued in a proceeding or
7 action to enforce the securities laws.

8 “(B) NONDISCLOSURE OF REQUESTS.—If
9 the Commission so directs in its subpoena, no
10 financial institution, or officer, director, part-
11 ner, employee, shareholder, representative or
12 agent of such financial institution, shall, di-
13 rectly or indirectly, disclose that records have
14 been requested or provided in accordance with
15 subparagraph (A), if the Commission finds rea-
16 son to believe that such disclosure may—

17 “(i) result in the transfer of assets or
18 records outside the territorial limits of the
19 United States;

20 “(ii) result in improper conversion of
21 investor assets;

22 “(iii) impede the ability of the Com-
23 mission to identify, trace, or freeze funds
24 involved in any securities transaction;

1 “(iv) endanger the life or physical
2 safety of an individual;

3 “(v) result in flight from prosecution;

4 “(vi) result in destruction of or tam-
5 pering with evidence;

6 “(vii) result in intimidation of poten-
7 tial witnesses; or

8 “(viii) otherwise seriously jeopardize
9 an investigation or unduly delay a trial.

10 “(C) TRANSFER OF RECORDS TO GOVERN-
11 MENT AUTHORITIES.—The Commission may
12 transfer financial records or the information
13 contained therein to any government authority,
14 if the Commission proceeds as a transferring
15 agency in accordance with section 1112 of the
16 Right to Financial Privacy Act of 1978 (12
17 U.S.C. 3412), except that a customer notice
18 shall not be required under subsection (b) or (c)
19 of that section 1112, if the Commission deter-
20 mines that there is reason to believe that such
21 notification may result in or lead to any of the
22 factors identified under clauses (i) through
23 (viii) of subparagraph (B) of this paragraph.”;
24 (4) by striking paragraph (10); and

- 1 (5) by redesignating paragraphs (11), (12), and
- 2 (13) as paragraphs (4), (5), and (6), respectively.

○